

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

PETER BIBRING (SBN 223981)
pbibring@aclusocal.org
MELANIE P. OCHOA (SBN 284342)
mpochoa@aclusocal.org
REKHA ARULANANTHAM (SBN 317995)
rarulanantham@aclusocal.org
ACLU FOUNDATION OF SOUTHERN CALIFORNIA
1313 West Eighth Street
Los Angeles, California 90017
Telephone: (213) 977-9500
Facsimile: (213) 977-5299

(Additional counsel listed on following page)

*Counsel for Intervenors ACLU of Southern California
and Valerie Rivera*

**SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE COUNTY OF LOS ANGELES**

LOS ANGELES POLICE PROTECTIVE
LEAGUE

Petitioners,

vs.

CITY OF LOS ANGELES, a municipal
corporation; MICHAEL R. MOORE, Chief of
Police, City of Los Angeles; and DOES 1
through 20, inclusive,

Respondents,

ACLU OF SOUTHERN CALIFORNIA and
VALERIE RIVERA,

Intervenors,

Case No. 18ST CPO 3495

**INTERVENORS' MEMORANDUM OF
POINTS AND AUTHORITIES IN
OPPOSITION TO PETITION FOR WRIT
OF MANDATE**

**HEARING DATE: February 5, 2019
TIME: 1:30 pm
DEPT: 85**

[Petition filed: December 31, 2018]

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

FIRST AMENDMENT COALITION, a California non-profit, public benefit corporation; LOS ANGELES TIMES COMMUNICATIONS LLC, a Delaware limited liability company; CALIFORNIA NEWSPAPERS PARTNERSHIP L.P., a Delaware limited partnership; THE CENTER FOR INVESTIGATIVE REPORTING, California non-profit, public benefit corporation; and CALIFORNIA NEWS PUBLISHERS ASSOCIATION, an association of California news organizations,

Intervenors.

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28

CHRISTINE P. SUN (SBN 218701)
csun@aclunc.org
ALAN SCHLOSSER (SBN 49957)
aschlosser@aclunc.org
KATHLEEN GUNERATNE (SBN 250751)
kguneratne@aclunc.org
SEAN RIORDAN (SBN 255752)
sriordan@aclunc.org
ACLU FOUNDATION OF NORTHERN CALIFORNIA, INC
39 Drumm Street
San Francisco, CA 94111
Telephone: 415-621-2493
Facsimile: 415-255-8437

DAVID LOY (SBN 229235)
davidloy@aclusandiego.org
ACLU FOUNDATION OF SAN DIEGO & IMPERIAL COUNTIES
P.O. Box 87131
San Diego, CA 92138-7131
Telephone: (619) 232-2121
Fax: (619) 232-0036

*Counsel for Intervenors ACLU of Southern California
and Valerie Rivera*

SHEPPARD, MULLIN, RICHTER & HAMPTON LLP
A Limited Liability Partnership
Including Professional Corporations
TENAYA RODEWALD (SBN 248563)
trodewald@sheppardmullin.com
JAMES CHADWICK (SBN 157114)
jchadwick@sheppardmullin.com
CRISTINA SALVATO (SBN 295898)
csalvato@sheppardmullin.com
379 Lytton Avenue
Palo Alto, California 94301-1479
Telephone: (650) 815-2600
Fax: (650) 815-2601

*Counsel for First Amendment Coalition, Los Angeles Times
Communications LLC, California Newspapers Partnership
L.P., The Center For Investigative Reporting, and
California News Publishers Association*

TABLE OF CONTENTS

I.	INTRODUCTION	1
II.	BACKGROUND	3
	A. Enactment of S.B. 1421 – The Right to Know Act	3
	B. Intervenor’s CPRA requests	3
III.	ANALYSIS.....	4
	A. S.B. 1421 requires an agency to produce records relating to a covered incident in its possession regardless of date, which is a prospective application of the law. ..	4
	1. The plain language of the statute requires production of all S.B. 1421 material currently in an agency’s possession upon request filed after Jan. 1...	4
	2. Requiring an agency to produce S.B. 1421 material currently in their possession reflecting conduct occurring prior to Jan. 1 is a prospective application of the law	7
	3. Peace officers have no vested interest in the confidentiality of their records of deadly force, sexual assault, or official dishonesty	9
	B. Even if the court determines that compelling agencies to produce records regarding misconduct occurring before January 1, 2019 is a “retroactive” application of the law, it should be applied to compel this production	13
	1. The Legislature intended S.B. 1421 to apply to records of conduct prior to Jan. 1	13
	2. Application of S.B. 1421 to all records is necessary to serve important state interests and overrides any claim of reliance on the past confidentiality of their records of deadly force and serious misconduct.	14
IV.	CONCLUSION.....	15

TABLE OF AUTHORITIES

Page(s)

Cases

<i>Aetna Cas. & Sur. Co. v Industrial Acc. Commission,</i> 30 Cal. 2d 388 (1947)	10
<i>AFSCME v. Regents,</i> 80 Cal. App. 3d 913 (1978)	1, 12
<i>Albertson v. Super. Ct.,</i> 25 Cal. 4th 796 (2001)	14
<i>Balen v. Peralta Junior Col. District,</i> 11 Cal.3d 821 (1974)	10
<i>State ex rel. Beacon Journal Pub. Co. v. Univ. of Akron,</i> 64 Ohio St.2d 392 (1980).....	6
<i>Bell v. Farmers Ins. Exch.,</i> 135 Cal. App. 4th 1138 (2006)	5
<i>Berkeley Police Assn. v. Berkeley,</i> 76 Cal. App. 3d 931 (1977)	12
<i>Biden v. Camden-Wyom. Sewer & Water Auth.</i> (Super.Ct. Nov. 7, 2012, No. 11C-08-004(RBY)) 2012 Del. Super. LEXIS 479.....	7
<i>Bouley v. Long Beach Mem. Med. Center,</i> 127 Cal. App. 4th 601 (2005)	15
<i>BRV, Inc. v. Super. Court,</i> 143 Cal. App. 4th 742 (2006)	1, 12
<i>Bullard v. Cal. State Automobile Assn.,</i> 129 Cal. App. 4th 211 (2005)	10
<i>Burks v. Poppy Construction Co.,</i> 57 Cal. 2d 463 (1962)	8
<i>Callet v. Alioto,</i> 210 Cal. 65 (1930)	10
<i>Canfield v. Prod,</i> 67 Cal. App. 3d 722 (1977)	10

1	<i>Cellular S., Inc. v. BellSouth Telecomms, LLC,</i>	
2	214 So.3d 208 (Miss. 2017)	7
3	<i>Copley Press, Inc. v. Super. Court,</i>	
4	39 Cal. 4th 1272 (2006)	1
5	<i>Delaney v. Super. Court,</i>	
6	50 Cal.3d 785 (1990)	5
7	<i>Doe v. California Dept. of Justice</i>	
8	173 Cal.App.4th 1095 (2009)	11
9	<i>In re. E.A.,</i>	
10	24 Cal.App.5th 648 (2018)	5
11	<i>In re E.J.,</i>	
12	47 Cal.4th 1258 (2010)	5
13	<i>Evangelatos v. Super. Ct.,</i>	
14	4 Cal. 3d 1188 (1988)	10
15	<i>Fla. Hosp. Waterman, Inc. v. Buster,</i>	
16	984 So.2d 478 (Fla. 2008).....	7
17	<i>Haw. Org. of Police Officers v. Soc’y of Prof. Journalists,</i>	
18	927 P.2d 386 (Haw. 1996)	6
19	<i>Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach</i>	
20	86 Cal.App.4th 534 (2001)	7
21	<i>Indus. Found. of South v. Tex. Indus. Accident Bd.,</i>	
22	540 S.W.2d 668 (Tex. 1976).....	7
23	<i>Ingebretsen v. McNamer,</i>	
24	137 Cal.App.3d 957 (1982)	15
25	<i>Joshua D. v. Super. Court,</i>	
26	157 Cal.App.4th 549 (2007)	5
27	<i>Kizer v. Hanna,</i>	
28	48 Cal. 3d 1 (1989)	7, 8, 9, 10
	<i>Long Beach Officers Ass’n v. City of Long Beach,</i>	
	59 Cal.4th 59 (2014)	11
	<i>Los Angeles County v. Super. Court,</i>	
	62 Cal. 2d 839 (1965)	11
	<i>In re Marriage of Boul,</i>	
	39 Cal. 3d 751 (1985)	10

1	<i>In re Marriage of Bouquet</i> ,	
2	16 Cal. 3d 583 (1976)	10, 14, 15
3	<i>Marylander v. Super. Court</i> ,	
4	81 Cal.App. 4th 1119 (2000)	6
5	<i>Michael v. Gates</i> ,	
6	38 Cal. App. 4th 737 (1995)	12, 13
7	<i>Mollick v. Twp. Of Worcester</i> ,	
8	32 A.3d 859 (Pa Commw.Ct. 2011)	7
9	<i>Mt. Hawley Ins. Co. v. Lopez</i> ,	
10	215 Cal.App.4th 1385 (2013)	14
11	<i>Myers v. Philip Morris Co.</i> ,	
12	28 Cal. 4th 828 (2002)	2, 10
13	<i>People v. Hernandez</i> ,	
14	46 Cal.3d 194 (1988)	6
15	<i>People v. McClinton</i> ,	
16	29 Cal. App. 5th 738 (2018)	8
17	<i>People v. Podesta</i> ,	
18	62 Cal. App. 3d 708 (1976)	11
19	<i>People v. Superior Court ("Smith")</i> ,	
20	6 Cal. 5th 457 (2018)	13
21	<i>Plotkin v. Sajahtera, Inc.</i> ,	
22	106 Cal. App. 4th 953 (2003)	10, 15
23	<i>Quarry v. Doe I</i> ,	
24	53 Cal. 4th 945 (2012)	7
25	<i>Sierra Club v. Super. Ct.</i> ,	
26	57 Cal. 4th 157 (2013)	4
27	<i>Strauss v. Horton</i> ,	
28	46 Cal. 4th 364 (2009)	10
	<i>Tapia v. Superior Court</i> ,	
	53 Cal. 3d 282 (1991)	9
	<i>Younger v. Superior Court</i> ,	
	21 Cal. 3d 102 (1978)	11, 12

Statutes

Cal. Penal Code § 832.7	1, 2
Cal. Penal Code § 832.7(a)	13
Cal. Penal Code § 832.7(b)(1)	5
Cal. Penal Code § 832.7(b)(1)(A)-(C)	3, 5
Cal. Penal Code § 832.7(b)(2)	5
Cal. Penal Code § 832.7(b)(5)	8
Cal. Penal Code § 832.8.....	1
Cal. Penal Code § 832.8(b)	5
Gov. Code § 6250 <i>et seq.</i>	1
Gov. Code § 6252(e).....	6
CPRA	<i>passim</i>
FOIA	7

Other Authorities

Cal. Const. Article I, § 3, subd. (b)(3)	12
Senate Bill 1421	<i>passim</i>

1 **I. INTRODUCTION**

2 The California Public Records Act (“CPRA”), GOV. CODE §6250 *et seq.*,¹ recognizes that
3 “access to information concerning the conduct of the people's business is a fundamental and necessary
4 right of every person.” *Id.* at §6250. The CPRA makes this right real by imposing on agencies an
5 affirmative obligation to make available to the public any public records in its possession, absent a
6 specific statutory basis for exclusion or upon an affirmative showing that the public interest would be
7 harmed by its disclosure. *Id.* at §6253(a), (c). The public’s right to records concerning the conduct of
8 government actors under CPRA generally includes, for most public employees, records of sustained
9 misconduct and investigations into conduct reflecting a serious public concern—regardless of the
10 investigative result. *See AFSCME v. Regents*, 80 Cal. App. 3d 913 (1978); *BRV, Inc. v. Super. Court*,
11 143 Cal. App. 4th 742 (2006). However, records related to peace officers were excepted from this rule
12 and were categorically exempted from the CPRA scheme by the “*Pitchess* statutes” enacted in 1978,
13 CAL. PENAL CODE §832.7, 832.8, and a broad interpretation of those statutes adopted by courts in 2006,
14 *Copley Press, Inc. v. Super. Court*, 39 Cal. 4th 1272 (2006). In 2018, the Legislature took steps to
15 address the harms caused by this carve out, including the loss of law enforcement legitimacy and
16 increased threats to public safety, S.B. 1421, Sec. 1(a), by enacting “The Right to Know Act,” Senate
17 Bill 1421 (Skinner 2018) (“S.B. 1421”), which reinstated public access to information on peace officers’
18 misconduct and agency investigations. S.B. 1421 modified the prior statutory exemption to allow public
19 access to certain categories of peace officer records in which the public interest is greatest: police uses
20 of deadly force, sustained findings of sexual assault and sustained findings of dishonesty in the
21 reporting, investigation, or prosecution of a crime. Intervenor asks solely for the LAPD to apply S.B.
22 1421 consistently with the plain language and intent of that law and the CPRA, by responding to their
23 CPRA requests filed after January 1, 2019 (“Jan. 1”) with the documents currently in its possession for
24 which the previous exemption under the *Pitchess* statutes no longer exists.

25 PPL opposes disclosure arguing that production of records relating to misconduct or uses of
26 deadly force prior to Jan. 1 would be a “retroactive” application of the statute. Under well-established
27 law, an application is deemed retroactive only if it “takes away or impairs vested rights acquired under
28

¹ All references to code sections refer to the Government Code unless otherwise indicated.

1 existing laws, or creates a new obligation, imposes a new duty, or attaches a new disability, in respect to
2 transactions or considerations already past.” *Myers v. Philip Morris Co.*, 28 Cal. 4th 828, 839 (2002)
3 (quoting *Landgraf v. USI Film Products*, 511 U.S. 244, 269 (1994) (internal quotation marks omitted).
4 PPL fails to show how removing the statutory confidentiality provided peace officers’ records of
5 misconduct results in any of the outcomes indicative of retroactive application. The law creates no new
6 obligations, liabilities or duties for peace officers, nor has PPL even alleged that it does. The only new
7 obligation the law creates is the prospective duty for agencies to produce public records in their
8 possession according to the exemptions in effect at the time they respond to the request.

9 The PPL’s only basis for asserting that S.B. 1421 has a retroactive effect is its claim that officers
10 have a “vested right” in the confidentiality of their records of misconduct based on the pre-S.B. 1421
11 *Pitchess* statutes, and that an agency’s compliance with S.B. 1421 would impair those rights. Neither
12 the PPL’s cases nor existing law supports a conclusion that officers may claim a perpetual right to
13 withhold from the public their records of misconduct after the sole statutory basis for that withholding
14 has been effectively repealed. To the contrary, the law recognizes that officers have no right in the
15 confidentiality of their records of misconduct aside from what is contemporaneously granted under
16 Penal Code Section 832.7. PPL’s baseless claim therefore provides no basis for interpreting the
17 Intervenors’ request as requiring a “retroactive” application.

18 Even if this court were to conclude that the production of records related to conduct prior to Jan.
19 1 was a “retroactive” application (it is not), it is clear that the Legislature intended S.B. 1421 to compel
20 the production of these materials. S.B. 1421 was enacted specifically to limit a prior carve out for police
21 officers within the CPRA scheme after the Legislature realized that continuing to conceal peace officer
22 records both harmed the public and impeded law enforcement in their duties. S.B. 1421 § 1(b). Given
23 the significant public interest, a balancing of the factors relevant to determine whether retroactive
24 application is permissible weighs heavily in favor of Intervenors’ proposed application of S.B. 1421, and
25 the law should be given its intended meaning to compel production of those records.²

26
27
28 ² Intervenors agree with and incorporate by reference all arguments and citations included within
the City’s Opposition.

1 **II. BACKGROUND**

2 **A. Enactment of S.B. 1421- The Right to Know Act**

3 Against the backdrop of the CPRA, mandating broad disclosure of government agency and
4 employee records, and the *Pitchess* statutes, that exempted peace officer personnel records from
5 disclosure, a broad coalition of over 150 organizations, including police reform groups, public sector
6 unions, media coalitions, faith-based organizations, public defender and district attorneys' offices
7 supported S.B. 1421—which sought to reopen to the public records of officers' most egregious
8 misconduct and uses of deadly force. It was opposed by only fourteen groups, consisting solely of law
9 enforcement lobbying groups and unions—including PPL—and two district attorney associations. (Joint
10 App'x at 0077-0078).

11 The Legislative findings adopted in S.B. 1421 recognized that the misuse of the authority granted
12 to law enforcement “can lead to grave constitutional violations, harms to liberty and the inherent sanctity
13 of human life, as well as significant public unrest.” S.B. 1421, § 1(a). It also declared that:

14 The public has a right to know all about serious police misconduct, as well as about
15 officer-involved shootings and other serious uses of force. Concealing crucial public
16 safety matters such as officer violations of civilians' rights, or inquiries into deadly use of
17 force incidents, undercuts the public's faith in the legitimacy of law enforcement, makes
18 it harder for tens of thousands of hardworking peace officers to do their jobs, and
19 endangers public safety.
20 *Id.* at § 1(b).

21 S.B. 1421 was signed on September 30, 2018, and went into effect January 1, 2019. Pursuant to
22 S.B. 1421, anyone who files a CPRA request for an agency's documents related to an officer's use of
23 deadly force, or sustained findings of sexual assault or dishonesty as defined by statute, including any
24 relevant officer personnel records, is entitled to disclosure. PENAL CODE § 832.7(b)(1)(A)-(C).

25 **B. Intervenors' CPRA requests**

26 All intervenors filed CPRA requests with the Los Angeles Police Department (“LAPD”) after
27 Jan. 1 seeking records relating to conduct occurring before that date that have been rendered disclosable
28 under S.B. 1421. Intervenor Valerie Rivera is the mother of Eric Rivera, a young man killed by LAPD
officers who encountered her son while walking down the street holding a plastic water gun on June 6,
2017. Declaration of Valerie Rivera (“Rivera Decl.” at ¶2.) Ms. Rivera's son was killed after being shot

1 by officers and then trapped under their vehicle when they failed to place it in park when they jumped
2 out the vehicle to shoot him. (*Id.*) The LAPD oversight commission determined that the officers’
3 actions were within department policy and imposed no discipline. (*Id.* at ¶¶2-3.) Ms. Rivera’s CPRA
4 request sought the full investigative file pertaining to LAPD officers’ killing of her son. (*Id.* at ¶9.)

5 Intervenor ACLU of Southern California’s (“ACLU SoCal”) and Media Intervenor’s requests
6 sought information relating to numerous deadly force instances and officers’ sustained findings of
7 sexual assault and dishonesty.³ ACLU SoCal and Media Intervenor received responses from the City
8 that “[t]o the extent [its] request seeks records relating to such incidents occurring before January 1,
9 2019” the LAPD was “currently prohibited from disclosing or providing any records responsive to this
10 portion of [its] request.”⁴ Thus the PPL’s writ seeks to block the release of information that would be
11 responsive to all Intervenor’s CPRA requests.

12 **III. Analysis**

13 **A. S.B. 1421 requires an agency to produce records relating to a covered incident in its** 14 **possession regardless of date, which is a prospective application of the law.**

15 **1. *The plain language of the statute requires production of all S.B. 1421 material*** 16 ***currently in an agency’s possession upon request filed after Jan. 1.***

17 Courts look first to the language of a statute to determine its purpose and effect. *Sierra Club v.*
18 *Super. Ct.*, 57 Cal. 4th 157, 165 (2013) (““We first examine the statutory language, giving it a plain and
19 commonsense meaning. We do not examine that language in isolation, but in the context of the
20 statutory framework as a whole in order to determine its scope and purpose and to harmonize the various
21 parts of the enactment.””) (internal citations omitted).

22 S.B. 1421 mandates that certain “peace officer . . . personnel records ***maintained*** by any state or
23 local agency shall not be confidential and shall be made available for public inspection pursuant to the

24 ³ Media Intervenor (First Amendment Coalition, Los Angeles Times Communications LLC,
25 California Newspapers Partnership L.P., The Center for Investigative Reporting, Inc., and California
26 News Publishers Association) object to the Court’s order requiring them to file a joint opposition brief
27 with ACLU SoCal and holding that they are not permitted to seek attorneys’ fees. Media Intervenor
28 reserve all rights to challenge the Court’s order by appeal or other appropriate means.

⁴ See Intervenor ACLU SoCal and Ms. Rivera’s Complaint in Intervention, Ex. B at 2-3; Media
Intervenor’s Ex Parte Application for Leave to Intervene at 12-16 and Declarations of David Snyder (at ¶¶
4, 5, Exs. C, D), Jeff Glasser (at ¶¶ 4-6, Exs. A-F), Victoria Baranetsky (at ¶ 3, Ex. A) and Todd
Harmonson (at ¶¶ 3, 4, Exs. A, B) filed January 17, 2019.

California Public Records Act.” PENAL CODE §832.7(b)(1) (emphasis added). It specifies that disclosure is now compelled for “any” and “all” officer records falling within the following categories:

- (A) A record relating to the report, investigation, or findings of **any** of the following:
 - (i) An incident involving the discharge of a firearm at a person by a peace officer or custodial officer.
 - (ii) An incident in which the use of force by a peace officer or custodial officer against a person resulted in death, or in great bodily injury.
- (B)(i) **Any** record relating to an incident in which a sustained finding⁵ was made by any law enforcement agency or oversight agency that a peace officer or custodial officer engaged in sexual assault involving a member of the public.
- ...
- (C) **Any** record relating to an incident in which a sustained finding was made by any law enforcement agency or oversight agency of dishonesty by a peace officer . . . directly relating to the reporting, investigation, or prosecution of a crime

PENAL CODE §832.7(b)(1)(A)-(C) (emphases added). Furthermore, Penal Code Section 832.7(b)(2) specifies that “[r]ecords that shall be released pursuant to this subdivision include **all** investigative reports; photographic, audio, and video evidence” *Id.* (emphasis added). Notably, Section 832.8(a) defines the “personal records” subject to 832.7 as “**any file** maintained under that individual’s name.” *Id.* (emphasis added).

“[T]he word ‘any’ means without limit and no matter what kind.” *Delaney v. Super. Court*, 50 Cal.3d 785, 798 (1990); *In re. E.A.*, 24 Cal.App.5th 648, 661 (2018) (“[T]he ordinary meaning of the word ‘any’ is clear, and its use in a statute unambiguously reflects a legislative intent for that statute to have a broad application”); *Joshua D. v. Super. Court*, 157 Cal.App.4th 549, 558 (2007) (“because the word ‘all’ means ‘all’ and not ‘some[,]’ [t]he Legislature’s chosen term leaves no room for judicial construction.”). Courts have held that the Legislature’s use of these terms reflects an intent to apply statutes to conduct or statuses predating its enactment. *See, e.g., In re E.J.*, 47 Cal.4th 1258, 1272 (2010) (holding “plain language” of law requiring “any person” who is a convicted sex offender subject to lifetime registration to comply with new residency requirements applied to those convicted prior to enactment); *Bell v. Farmers Ins. Exch.*, 135 Cal. App. 4th 1138, 1146 (2006) (holding law providing 10% interest rate on “all” unpaid wages was intended to apply “without exception” to claims accruing before enactment).

⁵ A finding is “sustained” after an agency’s final determination of guilt, and after officer has exhausted administrative appeals or the time to do so has expired. PENAL CODE §832.8(b).

1 Furthermore, S.B. 1421 operates in conjunction with the existing CPRA scheme by mandating
2 that the listed categories of documents be made available “**pursuant to the California Public Records**
3 **Act**,” and amending an existing ground for withholding records in response to a CPRA request.
4 “Statutes must be construed with reference to the system of laws of which they are a part.” *People v.*
5 *Hernandez*, 46 Cal.3d 194, 201 (1988). The CPRA enshrines the public’s right to access government
6 records, and requires that “[e]xcept with respect to public records exempt from disclosure by express
7 provisions of law, [e]ach . . . agency, **upon a request** for a copy of records, shall . . . determine whether
8 the request, in whole or in part, seeks copies of disclosable public records **in the possession of the**
9 **agency** and shall promptly notify the person making the request.” §6253(a), (c) (emphasis added). Thus
10 the CPRA generally requires that “[a]ll public records are subject to disclosure unless the Public
11 Records Act expressly provides otherwise.” *ACLU of Northern Cal.*, 202 Cal.App. 4th 55, 66 (2011)
12 (internal citations omitted); *Marylander v. Super. Court*, 81 Cal.App. 4th 1119, 1125 (2000) (“unless
13 exempted, all public records may be examined by any member of the public”). Furthermore, the CPRA
14 defines “public records”—including the records covered by S.B. 1421—as any records relating to the
15 conduct of the public’s business, with no express limitation based upon when the records were created.
16 GOV. CODE §6252(e)⁶. Thus, when S.B. 1421 narrowed the records that may be withheld under the
17 *Pitchess* exemption, and mandated that “any” and “all” of the listed categories of records “maintained”
18 by an agency be made available to the public **pursuant to** the CPRA, the Legislature unambiguously
19 required production of any and all covered records regardless of date. This conclusion is supported by the
20 decisions of numerous other state courts holding that when public records laws or amendments thereto
21 require disclosure of “all” records, or disclosure of “records” without reference to date, the laws require
22 disclosure regardless of when the records were created.⁷

23
24 ⁶ The only exception is in the case records of the Governor’s office, which are only “public
records” if they were prepared after 1975. *Id*

25 ⁷ See, e.g., *State ex rel. Beacon Journal Publ’ Co. v. Univ. of Akron*, 64 Ohio St.2d 392, 396
26 (1980) (rejecting argument that applying public records act amendment making law enforcement records
27 public to records created before its effective date was retroactive, and holding that Ohio’s public record
law “speaks in terms of ‘all public records’ and makes no distinction for those records compiled prior to
28 its effective date” and “[s]ince the statute merely deals with record disclosure . . . only a prospective
duty is imposed upon those maintaining public records.”); *Haw. Org. of Police Officers v. Soc’y of Prof.’l*
Journalists, 927 P.2d 386, 398-99 (Haw. 1996) (“No distinction is made, nor is there any exemption,
based upon the date that the record was created” and therefore the law “applies prospectively requiring

1 2. ***Requiring an agency to produce S.B. 1421 material currently in their***
2 ***possession reflecting conduct occurring prior to Jan. 1 is a prospective***
3 ***application of the law.***

3 PPL incorrectly characterizes the application of S.B. 1421 to records currently in the position of
4 government agencies relating to conduct prior to Jan. 1 as “retroactive.” “A statute is retroactive if it
5 substantially changes the legal effect of past events. A statute does not operate retroactively merely
6 because some of the facts or conditions upon which its application depends came into existence prior to
7 its enactment.” *Kizer v. Hanna*, 48 Cal. 3d 1, 7 (1989) (internal citations omitted); *Quarry v. Doe I*, 53
8 Cal. 4th 945, 955-56 (2012) (“Changes to the law, however, are not necessarily considered retroactive
9 even if their application ‘involve[s] the evaluation of civil or criminal conduct occurring before
10 enactment.’”); *Hermosa Beach Stop Oil Coalition v. City of Hermosa Beach* 86 Cal.App.4th 534, 550
11 (2001) (“‘A statute does not operate ‘retrospectively’ merely because it is applied in a case arising from
12 conduct antedating the statute’s enactment [citation], or upsets expectations based on prior law. Rather, the
13 court must ask whether the new provision attaches new legal consequences to events **completed** before its
14 enactment.’” (emphasis in original)). As discussed above, the law only imposes new obligations upon
15 agencies, and those obligations are prospective—they went into effect only after Jan. 1 and apply to
16 CPRA requests pending after that date. Agencies that currently maintain officers’ records relating to the
17 S.B. 1421 category of records have a prospective obligation to disclose these records where the sole

18
19 disclosure of records maintained by State agencies regardless of when the records came into
20 existence.”); *Indus. Found. of the S. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 677 (Tex. 1976)
21 (holding “it is clear that the [Texas public record] Act is intended to apply to all records kept by
22 governmental bodies, whether acquired before or after the Act’s effective date. No exception is made
23 for records which were considered confidential prior to [enactment]” and rejecting argument that
24 previous confidentiality created vested right); *Fla. Hosp. Waterman, Inc. v. Buster*, 984 So.2d 478, 487
25 (Fla. 2008) (“‘The use of the word ‘any’ to define the scope of discoverable records ... and the broad
26 definition of ‘patient’ ... expresses a clear intent that the records subject to disclosure include those created
27 prior to the effective date of the amendment’”); *Cellular S., Inc. v. BellSouth Telecomm, LLC*, 214 So.3d
28 208, 216 (Miss. 2017) (recognizing that even if records were confidential prior to public record act
amendments, the records “belong to the public” and must be disclosed); *Mollick v. Twp. of Worcester*,
32 A.3d 859, 870 (Pa. Commw.Ct. 2011) (rejecting argument that production of records prior to the
enactment of open records law was “retroactive” application and holding that “the applicability of the
[Law] is not specifically limited to public records created after its . . . effective date, but only to requests
for information made after the effective date,” thus it “applies to information . . . even if created prior to
that date.”); *Biden v. Camden-Wyom. Sewer & Water Auth.* No. 11C-08-004 (RBY), 2012 WL 5431035,
at *5 (Del. Super. Ct. Nov. 7, 2012) (rejecting claim that absence of applicable time period in public
records act amendment rendered application to pre-enactment records “retroactive,” and holding that in
the absence of time frame “the duty to produce records under [Delaware’s] FOIA applies to any and all
applicable records existing on the date the request was made.”).

1 basis for withholding would have been the no-longer-effective *Pitchess* provisions. This is clearly what
2 the Legislature intended, but contrary to PPL’s argument, it is a prospective application of the law.

3 Courts have regularly rejected arguments that an application is “retroactive” when it authorizes
4 or compels action taken after the effective date of the statute, even if its application depends on facts
5 existing before that date. Thus, in *Burks v. Poppy Construction Co.*, 57 Cal. 2d 463 (1962), one of the
6 leading cases, the Court held that applying a new law prohibiting discrimination in public assisted
7 housing to a housing project that received assistance prior to the statute’s effective date was not a
8 retroactive application because the law in question “does not purport to penalize past conduct . . . [and]
9 is not retroactive merely because it draws upon antecedent facts for its operation.” *Id.* at 474.

10 The Supreme Court in *Kizer* similarly rejected an argument by a Medi-Cal recipient’s heirs that a
11 law authorizing reimbursement of Medi-Cal benefits from the estate of a former recipient was a
12 retroactive application of the law when it was used to recoup benefits paid prior to the effective date of
13 the statute when death occurred after. 48 Cal. 3d at 3. The earlier payment of Medi-Cal benefits
14 (without expectation of reimbursement) was a preexisting condition but did not make the law retroactive
15 because it authorized repayment only from an estate arising after the recipient’s death and imposed no
16 new obligation on the recipient.⁸ *Kizer* concluded that while “the application of [the law] depends upon
17 the existence of facts or conditions that came into existence prior to the statute’s enactment . . . the clear
18 language of [the law] states that the statute applies only to estates arising after its effective date, and then
19 only if certain conditions do not exist⁹. . . [and thus] has no retroactive effect.” *Id.* at 9.

20 Recently, *People v. McClinton*, 29 Cal. App. 5th 738, 753 (2018), rejected a claim that statutory
21 amendments to the Sexually Violent Predator Act (“SVPA”) permitting disclosure of a defendant’s
22 psychiatric treatment records—previously confidential under statute—would be a retroactive application

23
24 ⁸ The Court also rejected the heirs’ argument that allowing recoupment based on pre-enactment
25 conduct interfered with their vested rights in the estate by recognizing that any such rights are grounded
26 in statute and “rest[] entirely upon legislative will” and are therefore subject to amendment at any time.
27 *Id.* at 5-6; 9-10. As further discussed in Section III.A.3, *Kizer*’s recognition that statutorily-created
28 rights do not create a “vested” right immune to later amendment also requires rejecting the PPL’s claim.

⁹ *Kizer* also recognized that the statute prohibited the right to recoup payments in certain
circumstances that may be “unfair.” 48 Cal. 3d at 6. The impact of S.B. 1421 is similarly limited. S.B.
1421 permits disclosure only for the most serious incidents and misconduct, not petty violations of
department rules. S.B. 1421 also protects information unrelated to official misconduct by permitting
redactions of personal information or any other information for which there is a legitimate public
interest to keep confidential. PENAL CODE §832.7(b)(5).

1 if applied to records that were confidential when created prior to the statute's enactment. Authorizing
2 access to these records merely “draws upon facts existing prior to its enactment,” namely a
3 “defendant’s previously existing . . . medical records” and provided a prospective process for accessing
4 such records; that some of these records were previously designated confidential was inconsequential.
5 *Id.*

6 The application of S.B. 1421, like the statutes discussed in the above cases, requires a certain
7 course of action based on facts existing prior to its enactment but that does not render it retroactive. An
8 officer’s use of deadly force or a history of dishonesty or sexual assault are merely facts existing prior to
9 the enactment of S.B. 1421. An agency’s obligation to produce records currently held reflecting past
10 conduct in response to a CPRA request after Jan. 1 does not impose any additional obligation or penalty
11 on the officer for past conduct; it does not penalize previously-permitted conduct nor impose new
12 limitations on an officer’s employment. Nor does it create an obligation or penalty for the agency if it
13 does not currently maintain those records or failed to produce these records in response to requests prior
14 to Jan. 1. *Cf. Kizer*, 48 Cal. 3d at 8 (“Consequently, the Department’s right to reimbursement arises, if
15 at all, at the time of the recipients death and is dependent on conditions existing at such time.”). It
16 merely creates a public right to access certain records—records already accessible under some
17 circumstances—and a corresponding obligation for an agency to produce such records in response to a
18 CPRA request. *Cf. Tapia v. Superior Court*, 53 Cal. 3d 282, 289 (1991) (recognizing that laws
19 amending the procedure of a criminal trial is prospective even when applied to trials concerning crimes
20 occurring before the law’s effective date). That this duty arises only if an agency currently maintains
21 records of officers who, due to pre-enactment conduct, were involved in the use of deadly force or were
22 adjudicated guilty of sexual assault or dishonesty is merely an “antecedent fact” that determines the
23 applicability of S.B. 1421; it does not convert this prospective agency duty into a retroactive law.

24 **3. *Peace officers have no vested interest in the confidentiality of their records of***
25 ***deadly force, sexual assault, or official dishonesty.***

26 Determining whether a law impairs a vested right may inform whether it functions prospectively.
27 PPL claims police officers had a “right to confidentiality in all of their personnel file information,” (Appl.
28 at 6), but this limited statutory confidentiality did not give officers *vested* right in continued application of
the prior statutory scheme to such records. PPL cites no cases in which the vested right at issue

1 resembles the type of interest it claims in the confidentiality of officers' records. Instead, it merely
2 relies on courts' statements acknowledging the statutory confidentiality granted those records under the
3 then-current version of the *Pitchess* law and alleges a "reliance" on such statements to argue that officers
4 have a "vested right" in their confidentiality. (Appl. at 4; Lally Decl. at ¶ 4). This is insufficient to
5 establish a "vested right" affected by the production of records related to conduct prior to Jan. 1.

6 None of the cases that the PPL relies on to claim that officers have a "vested right" in the
7 confidentiality of their records of misconduct are analogous. Rather, in each cited case the rejected
8 interpretation of the statute would have imposed new liability for past conduct.¹⁰ Notably, none of these
9 cases even considered whether a vested right was impacted by the challenged law.

10 Courts have long-rejected the idea that any statutorily-created remedy generally creates a vested
11 right.¹¹ *Callet v. Alioto*, 210 Cal. 65, 67 (1930) (recognizing that "a cause of action or remedy
12 de[p]endant on a statute falls with a repeal of the statute, even after the action thereon is pending");
13 *Plotkin v. Sajahtera, Inc.*, 106 Cal. App. 4th 953, 962 (2003) (recognizing that for purposes of
14 determining whether a statute functions retroactively "[c]ommon law rights were classified as 'vested';

15 _____
16 ¹⁰ See *Bullard v. Cal. State Auto Assn.*, 129 Cal. App. 4th 211 (2005) (applying statute to extend
17 statute of limitations for expired uninsured motorist claims would revive expired claims); *Myers*, 28 Cal.
18 4th at 840 (imposing civil liability on tobacco companies for injuries incurred while there was a law
19 absolving them from liability would "subject those companies to 'liability for past conduct'" (internal
20 citation omitted); *Aetna Cas. & Sur. Co. v Indus. Accident Comm'n*, 30 Cal. 2d 388, 395 (1947)
21 (applying statute to calculate employer's liability for workers' compensation benefits for injuries prior to
22 its effective date would "impose[] a new or additional liability and substantially affect[] existing rights
23 and obligations"); cf. *Evangelatos v. Super. Ct.*, 4 Cal. 3d 1188, 1206 (1988) (relying on *Aetna* to hold
24 that applicable law providing basis for compensation for injury is law at time of injury). The PPL also
25 cites *Balen v. Peralta Junior Coll. Dist.*, 11 Cal.3d 821 (1974), however this case, involving a teacher's
26 entitlement to due process prior to termination, ultimately turned on the Court's interpretation of the
27 statutory language, and did "not reach the question whether procedural due process, once given, is a
28 vested right." *Id.* at 830 n.9.

¹¹ Courts considering whether a vested right exists that would be impacted by a proposed
application of a statute, have almost exclusively invoked this concept with respect to property rights—
not an amorphous entitlement to the continued application of a statute. See, e.g., *Strauss v. Horton*, 46
Cal. 4th 364, 474 (2009) (considering relevant vested rights of same-sex couples exclusively in terms of
"vested property rights as lawfully married spouses"); *Kizer* 48 Cal. 3d at 5-6 (heir's interest to
testamentary distribution of an estate); *In re Marriage of Boul*, 39 Cal. 3d 751, 757 (1985) (wife's
interest home as separate property); *In re Marriage of Bouquet*, 16 Cal. 3d at 591-92 (1976) (wife's
interest in husband's income at the time earned); *Canfield v. Prod*, 67 Cal. App. 3d 722, 728 (1977)
(right to disability benefits owed). As illustrated by these cases, the term "vested right" is most
commonly invoked to refer to an individual's claim to real or personal property. See, e.g., *In re*
Marriage of Boul, 39 Cal. 3d at 757 n. 6 ("The word vested assumes different meanings in different
contexts. We use the word vested here to describe property rights that are not subject to a condition
precedent.") (internal citations and quotation marks omitted).

rights created by statute were not.”); *Doe v. Cal. Dep’t. of Justice*, 173 Cal. App.4th 1095, 1106-07 (2009) (“‘[I]t is presumed that a statutory scheme is not intended to create private contractual or vested rights,’ and a party claiming otherwise must overcome the presumption.” (internal citation omitted)); *but see L.A. Cty v. Super. Ct*, 62 Cal. 2d 839, 844 (1965) (rejecting argument that even the existence of a common-law cause of action necessarily created a vested right to recover). Any claim to a privacy for records of serious misconduct is derived solely from the *Pitchess* statutes, and has been lost with its amendment.¹² The PPL cites cases interpreting the prior *Pitchess* statutes acknowledging the then-applicable law recognizing that officers’ records of serious misconduct were given some confidentiality by limiting methods of disclosure. Appl. at 4-6. But these are only statements of the law under then-current statutes, and holding that prior interpretations of a statute provide independent legal authority once the relevant portions of the statute are repealed would render all legislative amendments a nullity.

In an analogous case, *Younger v. Super. Court*, 21 Cal. 3d 102 (1978), a statute protecting individuals’ privacy was held not to have created a vested right. A statute allowed court-ordered destruction of old records of marijuana offenses and petitioner received such an order, but during appeal the law was changed to divest the court of this power. *Id.* at 107-08. The prior statute unquestionably granted a right to destruction of his criminal records—and any cases interpreting the meaning of the relevant statute necessarily would have recognized this right¹³—but the Court rejected the argument that he had a vested right in this statutorily-created remedy after the law was changed, recognizing that “the power to grant or withhold such a remedy rests exclusively with the Legislature,” and it has discretion to eliminate that remedy. *Id.* As in *Younger*, officers claim no other authority for confidentiality of their records of misconduct other than the *Pitchess* statutes that the Legislature amended in S.B. 1421.

Nor can PPL’s claimed “vested right” arise from a generalized right of privacy, since comparable records for other public sector employees are not private or confidential. *See, e.g., AFSCME*, 80 Cal.

¹² *See, e.g., Long Beach Officers Ass’n v. City of Long Beach*, 59 Cal.4th 59, 67-68 (2014) (explaining the history of the *Pitchess* statutes).

¹³ In one of the two cases published citing code provision on which *Younger* relied, a court recognized a party’s “entitle[ment] to petition the superior court . . . to have the records of his arrest and conviction destroyed.”) *People v. Podesta*, 62 Cal. App. 3d 708, 726 (1976). The fact that a prior court recognized this statutory “entitlement” under the existing law did not impact whether the right was vested for purposes of the retroactivity analysis.

1 App. 3d 913 (compelling disclosure under the PRA for records of sustained misconduct); *BRV, Inc.* 143
2 Cal. App. 4th 742 (compelling disclosure under the PRA for investigations into serious misconduct).
3 Like the petitioner in *Younger*, an officer’s right to confidentiality in his or her past records of serious
4 misconduct is merely a creature of statute—a statute now amended with express recognition the public’s
5 compelling interest to access this information is paramount.¹⁴ PPL cannot claim a vested right in a now-
6 revoked, statutorily-created remedy.

7 The California constitution provides no support for PPL’s “vested right” claim. First, courts
8 have explicitly rejected their argument that officers have a constitutional right against disclosure of
9 records in violation of the *Pitchess* scheme. *Michael v. Gates*, 38 Cal. App. 4th 737, 745 (1995) (finding
10 “no reasonable expectation of privacy” under the California constitution where the “statutory scheme
11 makes it clear that the right to privacy in the records is limited . . . [and] allows disclosure of the records
12 in a variety of investigations”). Second, the section PPL cites merely explains that provisions directing
13 that statutes granting access should be interpreted broadly and those limiting access should be
14 interpreted narrowly does not “affect the construction of any statute . . . to the extent that it . . . govern[s]
15 discovery or disclosure of information concerning the official performance . . . of a peace officer.” CAL.
16 CONST. art. I, §3, subd. (b)(3). This is merely an aid for statutory interpretation, but S.B. 1421 is explicit
17 in what records must be produced in response to a CPRA request. Its interpretation needs no assistance
18 from those general principles, so the provision cited by the PPL has no application to this dispute.

19 PPL’s bare allegation that officers may have made “significant employment decisions in reliance
20 on that confidentiality and privacy,” (Lally Decl. at ¶4) is insufficient to manufacture a “vested right.”
21 First, courts have already explicitly rejected the idea that one may reasonably rely on the confidentiality
22 records where the law already permits even limited disclosure. *See, e.g., Michael*, 38 Cal. App. 4th at
23 745 (holding reliance on the confidentiality of officers’ records under the existing *Pitchess* scheme
24 unreasonable); *Berkeley Police Assn. v. Berkeley*, 76 Cal. App. 3d 931, 939 (1977) (holding witnesses’
25 reliance on department policy guaranteeing confidentiality of disciplinary records unreasonable where
26 “police records concerning the investigation of citizen complaints are subject to discovery (and hence
27

28 ¹⁴ In enacting S.B. 1421 the Legislature declared that the “public has a right to know all about
serious police misconduct, as well as about officer-involved shootings and other serious uses of force.”

disclosure) where good cause is shown in both criminal proceedings and civil trials”). In considering the applicability of SVPA amendments to permit disclosure of pre-enactment treatment records, the Court denied a retroactivity argument founded on defendant’s assertion that revoking the confidentiality of doctor-patient communications would be an “unfair change [to] the rules after he had already participated in treatment.” *People v. Superior Court (“Smith”)*, 6 Cal. 5th 457, 466 (2018). The Court rejected defendant’s claimed reliance on the “complete[] confidential[ity]” of these records, recognizing that even though prior law prohibited prosecutors from accessing treatment records not included in a shared evaluation, the possibility that some records **could** be disclosed within that evaluation thus provided “no assurance that any individual communication in connection with his treatment would be protected from disclosure”—essentially holding defendant’s reliance unreasonable. *Id.* at 466. Given the existing *Pitchess* scheme already provided for disclosure “in a variety of investigations,” *Michael*, 38 Cal. App. 4th at 745, including criminal and civil proceedings, internal investigations, and officer misconduct investigations “conducted by a grand jury, a district attorney’s, or the Attorney General’s office,” PENAL CODE §832.7(a), any reliance on the confidentiality of these records would have been unreasonable under the law and cannot form a basis to claim a “vested right.”¹⁵

B. Even if the court determines that compelling agencies to produce records regarding misconduct occurring before January 1, 2019 is a “retroactive” application of the law, it should be applied to compel this production.

1. *The Legislature intended S.B. 1421 to apply records of conduct prior to Jan. 1.*

The legislative history of S.B. 1421 also clearly shows that legislators understood that it would require the production of files currently maintained by state agencies—not merely documents related to conduct occurring after Jan. 1. The official Public Safety Committee analysis of S.B. 1421, in setting forth opposition groups’ arguments against the bill, included the claim that that it would make “records . . . available for public inspection irrespective of whether or not they occurred prior to the effective date

¹⁵ The PPL’s requested relief—to prohibit production of records relating to all **conduct** occurring prior to Jan. 1—goes far beyond any records impacted by any supposed reliance, by encompassing records created after the effective date of the statute, including complaints that have yet to be filed involving conduct in 2018, unissued investigative reports, and future disciplinary decisions. The PPL does not even present an argument why such records—all dependent on actions taken after the effective date of the statute—would be entitled to confidentiality under this claim of reliance. Nor would PPL’s meager reliance argument—that some officers may have elected to forgo an appeal of a finding that they engaged in sexual assault or lying in official records—apply to cases such as Ms. Rivera’s involving deadly force for which there was no discipline imposed.

of SB 1421.” (J. App’x at 0023). Nothing in the analysis nor any other statement in the legislative history contradicts this characterization of the bill’s effect—legislators looking to the official committee analysis for the impact of S.B. 1421 would therefore understand that it opens past records to disclosure, and passed the bill with that understanding. *Cf. Albertson v. Super. Ct.*, 25 Cal. 4th 796, 806-807 (2001) (relying on unopposed statement in opposition letter incorporated into Assembly Committee on Public Safety’s analysis that a revision to SVPA would allow disclosure of confidential medical conversations to conclude that Legislature intended for the bill to permit such disclosure).¹⁶

2. Application of S.B 1421 to all records is necessary to serve important state interests and overrides any claim of reliance on the past confidentiality of their records of deadly force and serious misconduct.

Even if application of S.B. 1421 to pre-Jan 1 records were deemed “retroactive” (it is not) and affected peace officers’ “vested right” this does not mean that the application is impermissible. The state has the “right to interfere with vested property rights whenever reasonably necessary to the protection of the health, safety, morals, and general well being of the people.” *In re Marriage of Bouquet*, 16 Cal. 3d 583, 592 & n. 9 (1976) (internal quotation marks and citations omitted). Thus, a law “can be applied retroactively if such a retroactive application is necessary to subserve a sufficiently important state interest.” *Id.* at 593. To make this determination, courts consider factors including “the significance of the state interest served by the law, the importance of the retroactive application of the law to effectuation of that interest, the extent of reliance upon the former law, the legitimacy of that reliance, and the extent to which the retroactive application of the new law would disrupt those actions.” *Id.* at 592. These factors compel application of S.B. 1421 to existing records of past conduct.

Both the Legislature and Supreme Court have recognized the public’s extraordinary interest in access to information about the operation of police. *See, supra* Sec. II.A; *Comm’n on Peace Officer*

¹⁶ PPL mischaracterizes this statement as a “lobbyists’ letter,” Appl. at 8, n. 4, ignoring its inclusion in the official committee analysis setting forth the opposition’s reasoning by quoting its letter. “In construing a statute, legislative committee reports, . . . are appropriate sources from which legislative intent may be ascertained.” *Mt. Hawley Ins. Co. v. Lopez*, 215 Cal. App.4th 1385, 1401 (2013) (quotation omitted). It is clear that opposition groups argued that application to past records was a central reason for the Legislature to reject the bill—of the 14 groups that submitted letters opposing the bill, six, including PPL, explicitly emphasized that the law would apply to past conduct, and two more indicated that bill would trigger “a wave of habeas petitions from convicted criminals . . . [and] [c]riminals previously arrested or investigated by an officer who is the subject of misconduct allegations,” implicitly acknowledging that S.B. 1421 must apply to currently existing records of past officer misconduct. *See, e.g.*, J. App’x at 0102; *see also* Ramos Dec. ¶ 5.

1 *Standards & Training v. Super. Court*, 42 Cal. 4th 278, 299 (2007).¹⁷ The only factor on the other side
2 of the equation is the extent and legitimacy of officers' reliance on the confidentiality of records of their
3 deadly force and serious misconduct, which is not at all persuasive. There is no reliance argument to be
4 made for many of these records,¹⁸ and, other than a generalized loss of privacy, PPL has not identified
5 any harm to officers based upon this lost confidentiality. Moreover, as discussed above reliance on the
6 confidentiality of records already disclosable under a variety of circumstances is unreasonable and
7 cannot justify stripping a monumental legislation of its impact.

8 "In order to support retroactive application of a law, the state's interest must be significant, but
9 need not be compelling." *Bouley v. Long Beach Mem. Med. Center*, 127 Cal.App.4th 601, 611 (2005).
10 When balancing, courts have routinely allowed retroactive application involving less compelling public
11 interests or more significant. See *In re Bouquet*, 16 Cal. 3d at 594 (stripping spouses of vested property
12 rights to provide gender equity in the dissolution of marital property); *Ingebretsen v. McNamer*, 137
13 Cal.App.3d 957, 962 (1992) (state's "strong policy toward protecting a person's dwelling place" justified
14 retroactive application of statute limiting ability of creditors to collect outstanding debt); *Bouley*, 127
15 Cal. App. 4th at 611 (permitting individuals in domestic partnerships to retroactively bring wrongful
16 death actions); *Plotkin*, 106 Cal.App.4th at 964 (retroactively invalidating of law regarding notice of
17 fees in parking facilities to further interest in "ensuring fair and appropriate code enforcement"). S.B.
18 1421's goals of increasing transparency and accountability, and building the public's trust is at least as
19 compelling as these other public concerns courts have held justified retroactive application.

20 **IV. Conclusion**

21 For the foregoing reasons, the Court should deny PPL's requested writ and enter the relief
22 requested by Intervenor.

26 ¹⁷ The potential for the transparency provided by S.B. 1421 to influence police accountability is
27 already evident, as in at least one case a local district attorney has initiated action against an officer
28 based upon facts in his personnel record that were not previously disclosed. See,
<https://www.mercurynews.com/2019/01/08/san-mateo-county-da-looking-to-reopen-criminal-investigation-of-fired-burlingame-police-office/>

¹⁸ See *supra*, footnote 15.

1 Dated: January 24, 2019

Respectfully submitted

2
3 AMERICAN CIVIL LIBERTIES UNION OF
SOUTHERN CALIFORNIA

4 ACLU FOUNDATION OF NORTHERN CALIFORNIA,
5 INC

6 ACLU FOUNDATION OF SAN DIEGO & IMPERIAL
COUNTIES

7 By: s/ Melanie P. Ochoa

8 Melanie P. Ochoa

9 Attorneys for Intervenors
AMERICAN CIVIL LIBERTIES UNION OF
10 SOUTHERN CALIFORNIA
VALERIE RIVERA

11 SHEPPARD, MULLIN, RICHTER & HAMPTON LLP

12
13 By: : s/ Tenaya Rodewald

14 Tenaya Rodewald

15 Attorneys for FIRST AMENDMENT COALITION; LOS
ANGELES TIMES COMMUNICATIONS LLC; THE
16 CENTER FOR INVESTIGATIVE REPORTING, INC.;
CALIFORNIA NEWSPAPERS PARTNERSHIP LP (d/b/a
17 BAY AREA NEWS GROUP and SOUTHERN
CALIFORNIA NEWS GROUP); CALIFORNIA NEWS
18 PUBLISHERS ASSOCIATION